

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-64

A RESOLUTION APPOINTING A CITY MANAGER AND APPROVING AN EMPLOYMENT AGREEMENT WITH SUCH MANAGER

WHEREAS, on 4 May 2004, the citizens of the area of Salt Lake County known as Cottonwood Heights voted to incorporate such area as a municipality operating under the council-manager form of government described in the "Optional Forms of Municipal Government Act" under then current UTAH CODE ANN. §10-3-1201 *et seq.* (the "*Act*"); and

WHEREAS, the city of Cottonwood Heights (the "*City*") was incorporated effective 14 January 2005; and

WHEREAS, in connection with its incorporation, the City's municipal council (the "*Council*") appointed Liane Stillman ("*Ms. Stillman*") as the City's first manager; and

WHEREAS, in May 2008, the Act was repealed except for municipalities, like the City, then operating under the council-manager form of government;

WHEREAS, Ms. Stillman recently announced her retirement, effective 6 January 2013; and

WHEREAS, in view of Ms. Stillman's impending retirement, the Council is required under applicable law to appoint a manager to act as the City's chief executive officer in place of Ms. Stillman; and

WHEREAS, following an extensive search, verification, interviewing and selection process, the Council unanimously selected John W. Park ("*Mr. Park*") as the City's new manager, based solely on his abilities, integrity, prior experience relating to the duties of office (including, without limitation, abilities in public administration and executive leadership) and managerial capabilities; and

WHEREAS, the Council now desires to formalize appointment of Mr. Park as the City's new manager effective 7 January 2013, and to approve an employment agreement (the "*Agreement*") with Mr. Park in the form of the attached exhibit; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to act as aforesaid;

NOW, THEREFORE, BE IT RESOLVED that the Cottonwood Heights city council hereby appoints John W. Park as the City's manager effective 7 January 2012, with all of the powers, duties and responsibilities specified by statute and by ordinance; and

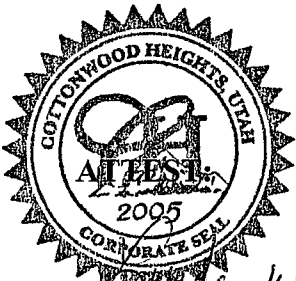
BE IT FURTHER RESOLVED by the Cottonwood Heights city council that the attached Agreement with Mr. Park is hereby approved; that the City's mayor and recorder are authorized and

directed to execute and deliver the Agreement on behalf of the City; and that all actions taken by any City officer or employee in connection with any prior negotiation, execution and delivery of the Agreement be, and hereby are, approved and ratified.

This Resolution, assigned no. 2012-64, shall take effect immediately upon passage as provided herein.

PASSED AND APPROVED this 4th day of December 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 4th day of December 2012.

RECORDED this 5th day of December 2012.

588917.1

Employment Agreement

THIS EMPLOYMENT AGREEMENT (this "*Agreement*") is made effective 4 December 2012 by **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **JOHN W. PARK**, an individual whose address is 1172 North 280 West, American Fork, UT 84003 (hereinafter, either "*Mr. Park*" or "*Manager*").

RECITALS:

A. City is a municipality organized under the "council-manager" optional form of government described in UTAH CODE ANN. §10-3b-103(6).

B. In a city organized under the "council-manager" optional form of government, the city's governing body (the "*Council*") is required to appoint a municipal manager to act as City's chief executive officer with the powers and duties specified by statute and by city ordinance, including, without limitation, those specified in Chapter 2.40, COTTONWOOD HEIGHTS CODE OF ORDINANCES.

C. Several months ago, City's current manager announced her retirement effective 1 January 2013. Consequently, the Council initiated a nationwide search for her replacement.

D. Mr. Park has significant expertise in local government, and submitted an application to serve as City's new manager.

E. Following an extensive selection process, the Council has indicated its desire to appoint Mr. Park as City's manager, subject to the parties' entry into a mutually-acceptable employment agreement.

F. Consequently, City desires to employ Mr. Park, and Mr. Park desires to be employed, as City's manager on the terms and conditions specified in this Agreement.

G. This Agreement shall supersede any and all prior negotiations and agreements, oral and/or written, between the parties concerning Mr. Park's employment by City as its manager.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Duties.** City hereby employs Manager, and Manager hereby accepts such employment, to perform the functions and duties of City's city manager under Utah state statute and City ordinance, together with such other proper and legally permissible administrative, management and other functions and duties as the Council may from time to time assign (collectively, the "*Services*").

Manager shall devote his full time and attention to the performance of the Services in a professional manner in accordance with all legal requirements and professional standards,



including, without limitation, the Code of Ethics (the "*Ethical Code*") of the International City/County Management Association (the "*ICCMA*"), which Ethical Code shall furnish principles to govern Manager's conduct as City's manager.

Manager shall observe and comply with the rules and regulations of City as adopted by the Council, either orally or in writing, respecting performance of Manager's duties, and shall timely and properly carry out and perform orders, directions and policies announced to Manager by the Council from time to time, either orally or in writing. Manager is not an hourly employee, and therefore shall be required to work as necessary to fully perform his responsibilities hereunder.

2. **Term of Employment.** Manager's initial term of employment shall be from 7 January 2013 through 31 December 2015, subject to a probationary period from 7 January-30 June 2013 (the "*Probationary Period*"). Thereafter, this Agreement automatically shall continue in effect for successive one-year (January 1st through December 31st) renewal periods. Notwithstanding the foregoing, however, Manager shall serve at the Council's pleasure, and nothing in this Agreement shall prevent, limit or otherwise interfere with the Council's right to terminate Manager's employment at any time, with or without cause, subject to Manager's right to severance as provided below. Similarly, nothing herein shall prevent, limit or otherwise interfere with Manager's right to resign at any time from the position of City's manager as provided below. Subject to the foregoing, this Agreement shall continue in effect until it is terminated by the Council or by Manager as provided below.

3. **Services, Independent Activities.** Throughout the duration of this Agreement, Manager shall be actively involved in personally performing the Services on a full-time basis, devoting Manager's time, attention and best efforts to City's affairs. Manager shall not be employed by any other person or entity while he is employed hereunder. Notwithstanding the foregoing, however, expending reasonable amounts of time for personal charitable or professional activities, or such outside business activities as may be pre-approved by the Council following Manager's written request and full disclosure, shall not be deemed a breach of this Agreement if such activities do not materially interfere with the Services to be rendered to City hereunder. Manager shall not, without City's express prior written consent (which consent may be withheld in City's sole, subjective discretion), engage in any activity competitive with or adverse to City's interests, whether alone in concert with others.

4. **Standards.** Manager shall perform Manager's duties under this Agreement in accordance with (a) all legal requirements, (b) the Ethical Code, and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

5. **Compensation and Benefits.** Conditioned on Manager's proper and timely performance of the Services, City shall provide the following compensation and benefits to Manager:

(a) **Base Salary.** City shall pay Manager an annual base salary (the "*Base Salary*"). Through 30 June 2013, Manager's Base Salary shall be the equivalent of One Hundred Twenty-one Thousand Dollars (\$121,000.00) annually. On 1 July 2013, Manager's Base Salary shall be increased to \$124,000.00 annually. Commencing 1 July 2014 and effective each July 1st thereafter, Manager's Base Salary may be increased (but not decreased) as the Council deems appropriate in its sole, subjective discretion based on the Council's evaluation of Manager's performance. The Base Salary shall be paid to Manager in approximately equal installments in

accordance with City's payroll practices from time to time. Appropriate deductions shall be made from each paycheck for withholding of FICA (or equivalent), federal and state income taxes, and any other appropriate items. As an "exempt" salaried employee, Manager shall not be entitled to overtime pay.

(b) Bonuses. In addition to the Base Salary, City may, but (except as provided in [5][b][i] below) shall not be obligated to, pay to Manager such incentive bonus(es) as the Council may from time to time determine in its sole, subjective discretion based on the Council's evaluation of Manager's performance.

(i) During Probationary Period. During the Probationary Period, Manager shall be eligible to receive a bonus of up to \$3,000 (the "Probationary Period Bonus") upon completion of the following tasks:

A. Manager will become more familiar with City's key advisory bodies, volunteers, etc. by attending at least one meeting of each of the following during the Probationary Period: historic committee; arts council; youth city council; Butlerville Days planning committee; emergency committee; planning commission; board of adjustment (if reasonably possible in view of infrequent meetings); architectural review commission (if reasonably possible in view of infrequent meetings); and City's annual volunteer appreciation dinner (if reasonably possible). Upon completion of this task, Manager will report to the Council and thereafter will be paid \$1,000 of the Probationary Period Bonus at the next regular payroll following such report.

B. Manager will become more familiar with City's key outside relationships by attending at least one meeting of each of the following during the Probationary Period: COG (council of governments); Conference of Mayors; CH2 (coordinating efforts between City and the Cottonwood Heights Parks and Recreation Service Area); Wasatch Front Regional Council; VECC (Valley Emergency Communication Center); Wasatch Front Waste and Recycling Service Area; and the Salt Lake County Council (Committee of the Whole). Upon completion of this task, Manager will report to the Council and thereafter will be paid \$1,000 of the Probationary Period Bonus at the next regular payroll following such report.

C. Manager will enhance his qualifications to serve as City's emergency manager by completing certifications for NIMS series 200, 700 and 800 during the Probationary Period. Upon completion of this task, Manager will report to the Council and thereafter will be paid \$1,000 of the Probationary Period Bonus at the next regular payroll following such report.

(ii) After Probationary Period. After the Probationary Period, the Council and Manager shall cooperatively develop and implement a formal, written evaluation system that includes quantifiable goals and benchmarks to gauge Manager's performance of the Services for purposes of determining the propriety of bonuses and Base Salary increases.

(c) Automobile Allowance. Because Manager is required to be on-call 24 hours per day, seven days a week, City shall provide Manager a \$450 per month vehicle allowance for use of Manager's private automobile in lieu of any duty to reimburse Manager for automobile mileage incurred in City-related travel. The Council may increase such monthly allowance by up to an additional \$150 per month upon Manager's request if Manager

demonstrates through records kept that such \$450 monthly allowance is reasonably inadequate. Alternatively, and in lieu of such vehicle allowance, Manager may choose instead to be reimbursed for miles traveled on City business (excluding commuting to and from Manager's residence) at applicable rates and requirements of the Internal Revenue Code. Manager's decision of whether to accept the monthly vehicle allowance or to instead accept mileage reimbursement at the IRS rate shall be made in advance for each full year of the term of this Agreement.

(d) Equipment. Because Manager is required to be on-call 24 hours per day, seven days a week, Manager shall be provided with the use of a City-owned "smart phone." Manager also shall be provided with appropriate office furnishings and equipment, including computers (desktop or laptop), iPad or the like. Manager's use of such City-provided "smart phone," computers and the like shall be in accordance with applicable policies adopted by the Council for City-owned devices. In lieu of a City-provided "smart phone," Manager may elect to instead receive a \$100/month "smart phone" allowance from City. Manager acknowledges that he has no expectation of privacy in connection with his use of City-owned communication devices such as "smart phones" and computers, or his use of Manager's personal communication devices to conduct City business.

(e) Dues and Subscriptions. City shall pay Manager's professional dues for membership in the ICCMA, the Utah City Management Association ("UCMA"), and any local city-county management association. City also shall pay such other dues and subscriptions on behalf of Manager as are approved in City's annual budget or as authorized separately from time to time by the Council.

(f) Professional Development. City shall pay for Manager's travel and attendance at the ICCMA's annual conference, the UCMA annual conference, and the Utah League of Cities and Towns' annual conference in accordance with the travel policies approved from time to time by the Council. City also shall pay for Manager's attendance at other seminars, conferences and committee meetings as are approved in City's annual budget or as are authorized separately from time to time by the Council.

(g) Retirement. Annually, City shall pay into one or more retirement accounts for Manager's benefit on a basis at least equivalent (as a percentage of income) as City's other full-time administrative/management employees. Such contribution shall not exceed the maximum permitted by federal law. Manager's retirement payments shall be payable in installments at the same time as retirement benefits are paid for City's other employees.

(h) Insurance. City shall provide Manager and his family with health, dental, disability, term life and other insurance coverage on the same basis as City's other full-time employees.

(i) Other Customary Benefits. Manager shall have the right to participate in and receive any other benefits or working conditions as are provided for City's other administrative/management employees.

6. Holidays; Personal Time Off; Executive Leave. Manager shall be entitled to the same paid holidays as City's other full-time employees. Manager also shall accrue personal time off ("PTO") in lieu of, *inter alia*, paid vacation and paid sick leave on the same basis as City's

other full-time administrative/management employees in accordance with policies approved by the Council from time to time. Further, in recognition of Manager's attendance at meetings of the Council most Tuesday evenings, Manager shall be entitled to up to six days of "executive leave" each fiscal year (three days during the Probationary Period), which may be taken in increments of not more than two consecutive days and otherwise in accordance with policies approved by the Council from time to time.

7. **Bonding.** City shall bear the full cost of any fidelity or other bonds covering Manager as required by statute or as desired by the Council.

8. **Expenses.** Manager may be reimbursed for Manager's reasonable business expenses in accordance with City's reimbursement policy from time to time.

9. **Termination by City.** The Council may terminate Manager's employment by majority vote at any time, with or without cause.

(a) **Termination For Cause.** The Council may terminate Manager's employment hereunder "for cause," which shall be defined as proven malfeasance in office pursuant to Laws of Utah 1977, Chapter 48, or other applicable law, which malfeasance shall include (to the extent legally permissible), without limitation, the following:

(i) Misfeasance, malfeasance and/or non-feasance in performance of Manager's duties and responsibilities hereunder.

(ii) Conviction of a felony crime, whether or not upheld on appeal.

(iii) Gross neglect of duty, including inability or unwillingness to properly discharge responsibilities of office after fair warning and opportunity to cure.

(iv) Violation of any substantive City policy, rule or regulation which would subject any other full-time City employee to termination.

(v) The commission of any fraudulent act against the City's interest.

(vi) The commission of any act which involves moral turpitude or which causes the City disrepute or embarrassment.

(vii) Material violation of the Ethical Code.

Upon the Council's determination of the existence of one or more of the above elements supporting termination of Manager's employment for cause, this Agreement shall be terminated upon written notice to Manager. In connection with such termination, City shall pay to Manager any accrued and unpaid salary and benefits earned (including unused accrued PTO in accordance with City's policies then in effect), but shall have no obligation to pay Manager severance pursuant to applicable law or this Agreement.

(b) **Termination Without Cause.** Any termination of Manager's employment for a reason other than those specified in section 9(a) above shall be deemed termination "without cause." Upon any termination without cause, City shall pay to Manager any accrued

and unpaid salary and benefits (including unused accrued PTO in accordance with City's policies then in effect) and also shall pay to Manager a lump sum severance payment equal to six (6) months' salary and retirement contribution. In addition, City shall continue to pay the premium for Manager's COBRA health insurance coverage for six (6) months following termination, but shall not be obligated to provide automobile or any other allowances or benefits available during Manager's employment hereunder. Severance pay ("Severance") shall not be construed as compensation for services performed. Such payment shall constitute full and complete payment and satisfaction of any claim that Manager may have or assert to have against City under this Agreement or otherwise.

10. **Termination by Manager.** Manager may terminate this Agreement at any time by delivering to the Council a written notice of termination at least sixty (60) days prior to the effective date of the termination. If Manager voluntarily resigns, City shall pay to Manager all compensation and benefits due hereunder up to his final day of employment, including compensating Manager for unused accrued PTO in accordance with City's policies then in effect. City shall have no further financial obligation to Manager for Severance or any other payment pursuant to this Agreement or otherwise; provided, however, that this shall not impact Manager's vested interest, if any, in any City-sponsored retirement account.

11. **Termination Upon Manager's Death or Disability.** Upon Manager's death or disability, City's obligations under this Agreement shall terminate except for:

(a) Transfer of ownership of retirement funds, if any, to Manager or his designated beneficiaries;

(b) Payment to Manager or his designated beneficiaries for Manager's unused accrued PTO in accordance with City's policies then in effect; and

(c) Processing and coordination of payment of all outstanding health, disability or life insurance benefits in accordance with City's insurance policies or plans.

For purposes of this Agreement, "*disability*" shall have the same meaning as in the disability policy maintained from time to time by City for its employees or, if no such policy exists, then as provided in federal social security laws, rules and regulations.

12. **Non-Funding.** The parties acknowledge that funds are not presently available for performance of this Agreement by the City beyond 30 June 2013. City's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or if there is a reduction in appropriations of the City, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on the City as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to the City of any kind whatsoever, and no right of

action for damages or other relief shall accrue to the benefit of Manager or his successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Notwithstanding the foregoing, however, upon any such non-funding, Manager may, at his option, elect to continue his employment hereunder without compensation until such time, if any, as funding becomes available, whereupon Manager's compensation hereunder shall resume. If Manager elects not to continue his employment hereunder in connection with any such non-funding, then Manager shall be deemed to have been terminated without cause under section 9(b) above, whereupon City shall pay Severance to Manager.

13. **Indemnification.** To the extent permitted by law, City shall defend, save harmless and indemnify Manager from any and all claims, actions, damages, proceedings (in law or equity), fees (including reasonable attorney's fees) and costs arising from, or in any way attributable to, Manager's performance of his duties hereunder so long as Manager is reasonably acting within the scope of his employment.

14. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) **Time of Essence.** Time is the essence of this Agreement.

A handwritten signature in dark ink, appearing to be a stylized name, located in the bottom right corner of the page.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. Both parties have had substantive input into the negotiation and drafting of this Agreement; consequently, this Agreement shall not be construed or interpreted more strictly against either party as the "drafter" of this Agreement.

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) No Assignment. Manager's rights and duties herein are personal in nature, and therefore cannot be assigned or delegated to any third party without the Council's prior written consent.

DATED effective the date first above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: _____

Linda W. Dunlavy, Recorder

By: _____

Kelvyn H. Cullimore, Jr., Mayor

MANAGER:

John W. Park

588345.3